

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

THOMAS R. BEASLEY,  
Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner  
of Social Security,  
Defendant.

)  
) No. CV-09-0277-CI  
)  
) ORDER DENYING PLAINTIFF'S  
) MOTION FOR SUMMARY JUDGMENT  
) AND GRANTING DEFENDANT'S  
) MOTION FOR SUMMARY JUDGMENT  
)  
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BEFORE THE COURT are cross-Motions for Summary Judgment. (Ct. Rec. 13, 16.) Attorney Maureen J. Rosette represents Thomas R. Beasley (Plaintiff); Special Assistant United States Attorney Leisa A. Wolf represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. (Ct. Rec. 8.) After reviewing the administrative record and briefs filed by the parties, the court **DENIES** Plaintiff's Motion for Summary Judgment, and directs entry of judgment for Defendant.

**JURISDICTION**

Plaintiff protectively filed for disability insurance benefits (DIB) and Supplemental Security Income (SSI) on December 29, 2006. (Tr. 109.) He alleged disability due to vision problems, anxiety

1 and a nerve disorder with an amended onset date of December 1, 2005.  
2 (Tr. 32-33, 143.) Benefits were denied initially and on  
3 reconsideration. Plaintiff timely requested a hearing before an  
4 administrative law judge (ALJ), which was held before ALJ Paul  
5 Gaughen on March 26, 2009. (Tr. 30-50.) Plaintiff, who was  
6 represented by counsel, and vocational expert Sharon Welter (VE)  
7 testified. The ALJ denied benefits on April 24, 2009, and the  
8 Appeals Council denied review. (Tr. 1-4, 12-29.) The instant  
9 matter is before this court pursuant to 42 U.S.C. § 405(g).

#### 10 STANDARD OF REVIEW

11 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001), the  
12 court set out the standard of review:

13 A district court's order upholding the Commissioner's  
14 denial of benefits is reviewed *de novo*. *Harman v. Apfel*,  
15 211 F.3d 1172, 1174 (9th Cir. 2000). The decision of the  
16 Commissioner may be reversed only if it is not supported  
17 by substantial evidence or if it is based on legal error.  
18 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).  
19 Substantial evidence is defined as being more than a mere  
20 scintilla, but less than a preponderance. *Id.* at 1098.  
21 Put another way, substantial evidence is such relevant  
22 evidence as a reasonable mind might accept as adequate to  
23 support a conclusion. *Richardson v. Perales*, 402 U.S.  
24 389, 401 (1971). If the evidence is susceptible to more  
25 than one rational interpretation, the court may not  
26 substitute its judgment for that of the Commissioner.  
27 *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of*  
28 *Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

The ALJ is responsible for determining credibility,  
resolving conflicts in medical testimony, and resolving  
ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th  
Cir. 1995). The ALJ's determinations of law are reviewed  
*de novo*, although deference is owed to a reasonable  
construction of the applicable statutes. *McNatt v. Apfel*,  
201 F.3d 1084, 1087 (9th Cir. 2000).

It is the role of the trier of fact, not this court, to resolve  
conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence

1 supports more than one rational interpretation, the court may not  
2 substitute its judgment for that of the Commissioner. *Tackett*, 180  
3 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup> Cir. 1984).  
4 Nevertheless, a decision supported by substantial evidence will  
5 still be set aside if the proper legal standards were not applied in  
6 weighing the evidence and making the decision. *Browner v. Secretary*  
7 *of Health and Human Services*, 839 F.2d 432, 433 (9<sup>th</sup> Cir. 1988). If  
8 there is substantial evidence to support the administrative  
9 findings, or if there is conflicting evidence that will support a  
10 finding of either disability or non-disability, the finding of the  
11 Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-  
12 1230 (9<sup>th</sup> Cir. 1987).

#### 13 SEQUENTIAL EVALUATION

14 Also in *Edlund*, 253 F.3d at 1156-1157, the court set out the  
15 requirements necessary to establish disability:

16 Under the Social Security Act, individuals who are  
17 "under a disability" are eligible to receive benefits. 42  
18 U.S.C. § 423(a)(1)(D). A "disability" is defined as "any  
19 medically determinable physical or mental impairment"  
20 which prevents one from engaging "in any substantial  
21 gainful activity" and is expected to result in death or  
22 last "for a continuous period of not less than 12 months."  
23 42 U.S.C. § 423(d)(1)(A). Such an impairment must result  
24 from "anatomical, physiological, or psychological  
25 abnormalities which are demonstrable by medically  
26 acceptable clinical and laboratory diagnostic techniques."  
27 42 U.S.C. § 423(d)(3). The Act also provides that a  
28 claimant will be eligible for benefits only if his  
impairments "are of such severity that he is not only  
unable to do his previous work but cannot, considering his  
age, education and work experience, engage in any other  
kind of substantial gainful work which exists in the  
national economy. . . ." 42 U.S.C. § 423(d)(2)(A). Thus,  
the definition of disability consists of both medical and  
vocational components.

In evaluating whether a claimant suffers from a  
disability, an ALJ must apply a five-step sequential  
inquiry addressing both components of the definition,

1 until a question is answered affirmatively or negatively  
2 in such a way that an ultimate determination can be made.  
3 20 C.F.R. §§ 404.1520(a)-(f), 416.920(a)-(f). "The  
4 claimant bears the burden of proving that [s]he is  
5 disabled." *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir.  
6 1999). This requires the presentation of "complete and  
7 detailed objective medical reports of h[is] condition from  
8 licensed medical professionals." *Id.* (citing 20 C.F.R. §§  
9 404.1512(a)-(b), 404.1513(d)).

10 The Commissioner has established a five-step sequential  
11 evaluation process for determining whether a person is disabled. 20  
12 C.F.R. §§ 404.1520(a), 416.920(a); see *Bowen v. Yuckert*, 482 U.S.  
13 137, 140-42 (1987). In steps one through four, the burden of proof  
14 rests upon the claimant to establish a prima facie case of  
15 entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d  
16 920, 921 (9<sup>th</sup> Cir. 1971). This burden is met once a claimant  
17 establishes that a physical or mental impairment prevents him from  
18 engaging in his previous occupation. 20 C.F.R. §§ 404.1520(a),  
19 416.920(a). At step five, the burden shifts to the Commissioner to  
20 show that (1) the claimant can perform other substantial gainful  
21 activity; and (2) a "significant number of jobs exist in the  
22 national economy" which claimant can perform. 20 C.F.R. §§  
23 404.1520(a)(4)(v), 416.920(a)(4)(v); *Kail v. Heckler*, 722 F.2d 1496,  
24 1498 (9<sup>th</sup> Cir. 1984).

#### 25 STATEMENT OF THE CASE

26 The facts of the case are set forth in detail in the transcript  
27 of proceedings and are briefly summarized here. At the time of the  
28 hearing, Plaintiff was 54 years old. (Tr. 38.) He had a high  
school education and two years of college, during which he earned an  
Associate degree in Culinary Arts. (Tr. 34.) Plaintiff was single  
with no children. He testified he was living in a house with

1 several house mates at the time of the hearing. He did household  
2 chores and some cooking for the other residents. (Tr. 40.)  
3 Plaintiff had a significant work history as a chef's helper for 20  
4 years. (Tr. 144.) He testified he quit his job as a chef's helper  
5 because he developed blurred vision and was diagnosed with severe  
6 cataracts and a detached retina. (Tr. 35.) He reported having  
7 several surgeries to correct the vision problems, but his eyes still  
8 drifted and he had blurred vision that gave him headaches, affected  
9 his balance and concentration, and caused him anxiety. (Tr. 35-37.)

#### 10 ADMINISTRATIVE DECISION

11 At step one, ALJ Gaughen found Plaintiff had not engaged in  
12 substantial gainful activity since the alleged onset date. (Tr.  
13 17.) At step two, he found Plaintiff had severe impairments of  
14 "severe visual impairments; anxiety disorder, not otherwise  
15 specified (NO); and personality disorder, NOS with avoidant and  
16 paranoid features." *Id.* At step three, he found Plaintiff's  
17 impairments, alone and in combination, did not meet or medically  
18 equal one of the listed impairments in 20 C.F.R., Appendix 1,  
19 Subpart P, Regulations No. 4 (Listings). (Tr. 19.) The ALJ  
20 summarized Plaintiff's self-report, made findings, and concluded  
21 Plaintiff's statements were not credible. (Tr. 20-22.) At step  
22 four, he determined Plaintiff had the residual functional capacity  
23 (RFC) to perform a full range of work at all exertional levels with  
24 several nonexertional limitations. (Tr. 20.) The specific  
25 nonexertional limitations identified were:

26 He is not able to accomplish work tasks requiring precise  
27 or unimpaired vision. He should avoid balancing tasks;  
28 fine manipulating; work in unprotected places; driving at  
night or in dark places; and sophisticated social

1 interaction or collaborative work with new and unfamiliar  
2 people. He would have delays in new detailed tasks/delays  
3 in working memory but has retained all of his previous  
detailed learning. He is capable of learning simple  
routine tasks.

4 (Tr. 20.)

5 Based on the RFC and VE testimony, the ALJ concluded Plaintiff  
6 could no longer perform his past relevant work. (Tr. 24.) The ALJ  
7 proceeded to step five, took additional VE testimony, and found  
8 Plaintiff's RFC enabled him to perform other occupations that  
9 existed in significant numbers in the national economy, such as  
10 cleaner/housekeeping, laundry sorter, and bakery assembly line  
11 worker. (Tr. 25, 40-46.) The ALJ concluded Plaintiff had not been  
12 disabled, as defined by the Social Security Act, from the alleged  
13 onset date through the date of his decision and was, therefore,  
14 ineligible for benefits. (Tr. 25.)

#### 15 **ISSUES**

16 The question is whether the ALJ's decision is supported by  
17 substantial evidence and free of legal error. Plaintiff argues the  
18 ALJ erred when he (1) found Plaintiff's statements were not  
19 credible, and (2) improperly rejected the opinions of examining  
20 psychologist Scott Mabee, Ph.D., and his associates who examined  
21 Plaintiff in 2007, 2008, and 2009. (Ct. Rec. 14.)

#### 22 **DISCUSSION**

##### 23 **A. Credibility**

24 When the ALJ finds a claimant's statements as to the severity  
25 of impairments, pain, and functional limitations are not credible,  
26 the ALJ must make a credibility determination with findings  
27 sufficiently specific to permit the court to conclude the ALJ did  
28

1 not arbitrarily discredit claimant's allegations. *Thomas v.*  
2 *Barnhart*, 278 F.3d 947, 958-959 (9<sup>th</sup> Cir. 2002); *Bunnell v. Sullivan*,  
3 947 F.2d 341, 345-46 (9<sup>th</sup> Cir. 1991) (en banc). Nonetheless, an  
4 adjudicator cannot be required to believe every allegation of  
5 disabling symptoms, even when medical evidence exists that a  
6 claimant's condition may produce the alleged symptoms. "Many  
7 medical conditions produce pain not severe enough to preclude  
8 gainful employment." *Fair v. Bowen*, 885 F.2d 597, 603 (9<sup>th</sup> Cir.  
9 1989). Although an adjudicator may not reject a claimant's extreme  
10 symptom complaints solely on a lack of objective medical evidence,  
11 medical evidence is a relevant factor to consider. *Social Security*  
12 *Ruling (SSR) 96-7p*.

13 If there is no affirmative evidence that a claimant is  
14 malingering, the ALJ must provide "clear and convincing" reasons for  
15 rejecting the claimant's symptom testimony. *Reddick v. Chater*, 157  
16 F.3d 715, 722 (9<sup>th</sup> Cir. 1998). The ALJ engages in a two-step  
17 analysis in deciding whether to admit a claimant's subjective  
18 symptom testimony. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36  
19 (9<sup>th</sup> Cir. 2007); *Smolen v. Chater*, 80 F.3d 1273, 1281 (9<sup>th</sup> Cir. 1996).  
20 Under the first step, the ALJ must find the claimant has produced  
21 objective medical evidence of an underlying "impairment," and that  
22 the impairment, or combination of impairments, could reasonably be  
23 expected to cause "some degree of the symptom." *Lingenfelter*, 504  
24 F.3d at 1036. Once the first test is met, the ALJ must evaluate the  
25 credibility of the claimant and make specific findings supported by  
26 "clear and convincing" reasons. *Id.*

27 In addition to ordinary techniques of credibility evaluation,  
28

1 the ALJ may consider the following factors when weighing the  
2 claimant's credibility: the claimant's reputation for truthfulness;  
3 inconsistencies either in his allegations of limitations or between  
4 his statements and conduct; daily activities and work record; and  
5 testimony from physicians and third parties concerning the nature,  
6 severity, and effect of the alleged symptoms. *Light v. Social Sec.*  
7 *Admin.*, 119 F.3d 789, 792 (9th Cir. 1997); *Fair*, 885 F.2d at 597  
8 n.5. The ALJ may also consider an unexplained failure to follow  
9 treatment recommendations and testimony by the claimant "that  
10 appears less than candid." *Tommasetti v. Astrue*, 533 F.3d 1035,  
11 1039 (9<sup>th</sup> Cir. 2008). As explained by the Commissioner in his policy  
12 ruling, the ALJ need not totally reject a claimant's statements; he  
13 or she may find the claimant's statements about pain to be credible  
14 to a certain degree, but discount statements based on his  
15 interpretation of evidence in the record as a whole. SSR 96-7p.  
16 The ALJ may find a claimant's abilities are affected by the symptoms  
17 alleged, but "find only partially credible the individual's  
18 statements as to the extent of the functional limitations." *Id.*

19 Although credibility determinations are the province of the  
20 ALJ, and "the court may not engage in second-guessing," *Thomas*, 278  
21 F.3d at 959, courts have imposed on the Commissioner a requirement  
22 of specificity. *Connett v. Barnhart*, 340 F.3d 871, 873 (9<sup>th</sup> Cir.  
23 2003); *Dodrill v. Shalala*, 12 F.3d 915, 917 (9<sup>th</sup> Cir. 1993).

24 Here, the record contains no affirmative evidence of  
25 malingering. In the Commissioner's credibility findings, the ALJ  
26 found Plaintiff's medically determinable impairments could be  
27 expected reasonably to produce symptoms alleged by Plaintiff. (Tr.

21.) He specifically noted Plaintiff's self-reported activities of daily living, which included sharing household chores with his house mates, shopping, running errands with a house mate, doing odd jobs, yard work and basic cooking at the house, cleaning the kitchen, taking care of pets and watching television until his vision starts to fail. (Tr. 20-22.) The ALJ also noted Plaintiff's allegations of memory and concentration problems, problems with balance, nausea, headaches every three to four hours, and anxiety. (Tr. 22.) ALJ Gaughen then specified several reasons for finding Plaintiff's statements regarding the degree of intensity and limitation caused by his impairments not credible. He first found the medical evidence did not support a finding of total disability due to vision problems, referencing evidence from treating physician Stephen Maher, M.D., in 2007, and from the Spokane Eye Clinic in 2008, that indicates Plaintiff vision was impaired after surgery, but improved to 20/50 in the right eye and 20/30 in the left eye with glasses. (Tr. 21, 298, 319.)

While a lack of supporting medical evidence alone is not a reason to reject a claimant's credibility, the ALJ gave other "clear and convincing" reasons for rejecting Plaintiff's complaints of disabling symptoms. First, he noted Plaintiff made infrequent visits to his doctor for eye problems, and did not report headaches or nausea to his physicians during follow-up visits, thus discrediting allegations of disabling, ongoing symptoms. He also noted Plaintiff described numerous daily activities such as cleaning the kitchen, preparing meals, doing dishes and house cleaning, working in the yard, caring for pets and running errands with a

1 house mate, which the ALJ reasonably found were inconsistent with a  
2 finding of total disability due to vision problems and/or mental  
3 problems. (Tr. 22.) *Stubbs-Danielson v. Astrue*, 539 F.3d 1169,  
4 1175 (9<sup>th</sup> Cir. 2008). In addition, the ALJ specifically addressed  
5 Plaintiff's claims of disabling mental problems, finding his  
6 assertions unreliable because Plaintiff did not seek mental health  
7 counseling or medication for his alleged severe symptoms of anxiety,  
8 concentration, and depression despite repeated recommendations from  
9 examining psychologists. (Tr. 22.) The ALJ reasoned the failure to  
10 seek help suggested the claimed symptoms were not so disabling as  
11 represented. These are "clear and convincing" reasons supported by  
12 the record.<sup>1</sup> *Fair*, 885 F.2d at 604.

13 The record shows that in 2007, Plaintiff described daily

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14  
15 <sup>1</sup> Although the Ninth Circuit has cautioned against chastising  
16 a claimant who suffers from depression for "the exercise of poor  
17 judgment in seeking rehabilitation," *Nguyen v. Chater*, 100 F.3d  
18 1462, 1465 (9<sup>th</sup> Cir. 1996)(quoting *Blankenship v. Bowen*, 874 F.2d  
19 1116, 1124 (6<sup>th</sup> Cir. 1989)), Plaintiff was advised consistently to  
20 seek treatment for his reported anxiety symptoms. (Tr. 252, 311.)  
21 Unlike the claimant in *Nguyen*, Plaintiff was aware of the diagnosed  
22 mental illness as early as 2007, but did not follow Dr. Mabee's  
23 recommendations for treatment in 2007 or 2008. It is noted on  
24 review that Plaintiff offers no explanation for his failure to  
25 follow through. SSR 96-7p (in assessing credibility, where records  
26 show lack of treatment for alleged impairment, adjudicator must  
27 consider claimant's explanation for failure to seek treatment).  
28 (See Tr. 37-38.)

1 activities that are transferrable to the work place, and social  
2 activities and relationships with house mates and family that are  
3 inconsistent with his claims of social isolation due to anxiety.  
4 (Tr. 249-58.) Further, as found by the ALJ, there is no evidence  
5 Plaintiff complained of anxiety symptoms to providers prior to the  
6 2007 psychological evaluation, at which time individual counseling  
7 and medication were suggested by Dr. Mabee. (Tr. 252.) In the 2008  
8 psychological evaluation, Plaintiff reported helping his house mate  
9 with paperwork and doing odd jobs around the house, watching  
10 television, and driving. He also reported continued anxiety  
11 symptoms and problems with concentration; again, the evaluator  
12 recommended individual therapy and consultation with a physician for  
13 medication. (Tr. 311.) There is no evidence Plaintiff followed  
14 through with these recommendations to relieve his symptoms.<sup>2</sup>

15 The ALJ did not err in discounting Plaintiff's complaints. The  
16 record shows Plaintiff made no effort to seek relief, despite  
17 repeated recommendations. Rather, he consistently reported an  
18 ability take care of his personal needs, interact with family and  
19 house mates, assist a house mate with his business, and contribute  
20 to the management of his household.

21 The ALJ also enumerated various inconsistencies between  
22 Plaintiff's allegations and Dr. Mabee's narrative reports and

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23  
24 <sup>2</sup> It is noted on review that in 2009, that Plaintiff was not  
25 involved in counseling or treatment with medication for his  
26 symptoms. (Tr. 327.) The 2009 mental health examiners repeated  
27 their recommendation of individual therapy and medication to control  
28 anxiety symptoms. (Tr. 328-29.)

1 testing results. (Tr. 22.) Specifically, he noted that normal  
2 attention and concentration were observed by the evaluators,  
3 cognitive testing showed "minimal sufficient effort," the  
4 possibility of "mild exaggeration of complaints and problems," and  
5 test scores measuring depression and anxiety were drastically  
6 inconsistent from year to year. (Tr. 22, 251, 314.) These are  
7 permissible reasons to support an adverse credibility finding.  
8 *Parra v. Astrue*, 481 F.3d 742, 750-51 (9<sup>th</sup> Cir. 2007). The ALJ's  
9 credibility determination is a reasonable interpretation of the  
10 evidence, is supported by specific, "clear and convincing" reasons,  
11 and, therefore, will not be disturbed.

12 **B. Dr. Mabee's Psychological Evaluations, 2007 and 2008**

13 In these proceedings, the ALJ evaluates the medical evidence  
14 submitted and must explain the weight given to the opinions of  
15 accepted medical sources. 20 C.F.R. §§ 404.1527, 416.927. As a  
16 licensed psychologist, Dr. Mabee is an acceptable medical source.  
17 The record includes three psychological evaluations conducted by Dr.  
18 Mabee and assessment specialists. The examinations include an  
19 interview, mental status exam, and various objective psychological  
20 tests, and summary. (Tr. 307-332.)

21 In evaluating medical opinions, the ALJ must provide "clear and  
22 convincing" reasons for rejecting uncontradicted opinions of a  
23 treating or examining physician and "specific" and "legitimate"  
24 reasons for rejecting contradicted opinions. *Lester v. Chater*, 81  
25 F.3d 821, 830 (9<sup>th</sup> Cir. 1995); *Andrews*, 53 F.3d at 1043.

26 Historically, the courts have recognized conflicting medical  
27 evidence, the absence of regular medical treatment during the  
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1 alleged period of disability, and the lack of medical support for  
2 doctors' findings based substantially on a claimant's subjective  
3 complaints as specific, legitimate reasons for disregarding an  
4 examining physician's opinion. *Flaten v. Secretary of Health and*  
5 *Human Servs.*, 44 F.3d 1453, 1463-64 (9<sup>th</sup> Cir. 1995); *Fair*, 885 F.2d  
6 at 604. Medical opinions based on a claimant's subjective  
7 complaints may be rejected where the claimant's credibility has been  
8 properly discounted. *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9<sup>th</sup>  
9 Cir. 2001). Rejection of an examining medical source opinion is  
10 specific and legitimate where the medical source's opinion is not  
11 supported by his or her own medical records and/or objective data.  
12 *Tommasetti*, 533 F.3d at 1041.

13 Plaintiff contends the ALJ erroneously rejected mental  
14 functional limitations noted on Dr. Mabee's psychological evaluation  
15 form reports that accompany narrative evaluations completed in 2007,  
16 2008, and 2009.<sup>3</sup> (Ct. Rec. 14 at 13-15.) On the 2007 summary form,  
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19 <sup>3</sup> The May 2009 psychological evaluation was obtained after the  
20 ALJ's denial of benefits; it was submitted to the Appeals Council on  
21 June 2, 2009. (Tr. 321.) Because the post-decision evidence was  
22 considered by the Appeals Council, it is part of the record on  
23 review by this court. *Ramirez v. Shalala*, 8 F.3d 1449, 1452 (9<sup>th</sup>  
24 Cir. 1993); *Gomez v. Chater*, 74 F.3d 967, 971 (9<sup>th</sup> Cir. 1996).  
25 Because the new evidence relates to a period after the ALJ's  
26 decision, it is not material to the period at issue. See 20 C.F.R.  
27 § 404.970; *Bates v. Sullivan*, 894 F.2d 1059, 1064 (9<sup>th</sup> Cir. 1990),  
28 *overruled on other grounds*, *Bunnell v. Sullivan*, 947 F.2d 341, 342

1 the evaluator assessed three moderate limitations in cognitive  
2 factors and marked limitations in all social factors, *i.e.*, ability  
3 to perform routine tasks, relate appropriately to co-workers and  
4 supervisors; interact appropriately in public contacts; respond  
5 appropriately to the pressures and expectations of a normal work  
6 setting; care for self; control physical or motor movements; and  
7 maintain appropriate behavior. (Tr. 256.) These limitations were  
8 expected to last 12 to 18 months. (Tr. 257.) In 2008, the  
9 evaluator assessed mild to moderate limitations in cognitive factors  
10 and social factors, and one marked limitation in Plaintiff's ability  
11 to respond appropriately to the pressures of a normal work setting.  
12 (Tr. 310). Medication and therapy were recommended and limitations  
13 were expected to last six to twelve months. (Tr. 311.) In 2009,  
14 the evaluator assessed two moderate limitations in cognitive factors  
15 and marked limitations in all social factors listed above, with a  
16 duration expectation of 15 to 18 months. (Tr. 324-25.)

17 As stated by the examiner in 2007, "our impressions are  
18 dependent upon information provided by Mr. Beasley," as well as the  
19 test results. (Tr. 252.) It appears the examiner relied on  
20 Plaintiff's self-report to a large degree in the 2008 evaluation

21 \_\_\_\_\_  
22 (9th Cir. 1991). Further, the reasons given by the ALJ for  
23 discounting the findings noted on the 2007 and 2008 check box forms  
24 apply reasonably to the 2009 findings. It is unlikely consideration  
25 of the new evidence will change the outcome of these proceedings;  
26 therefore remand for consideration by the ALJ is not warranted.  
27 *Mayes v. Massanari*, 276 F.3d 453, 462 (2001); *Booz v. Secretary of*  
28 *Health and Human Serv.*, 734 F.2d 1378, 1381 (9th Cir. 1984).

1 also. (See Tr. 315.) The ALJ specifically discounted functional  
2 limitations assessed in the 2007 and 2008 checkbox forms, according  
3 those findings little weight because they were based on unreliable  
4 self-report in a secondary gain context and because the basis for  
5 the conclusions was unexplained. (Tr. 23.) These are specific and  
6 legitimate reasons to disregard the unexplained check box form  
7 findings. *Tonapetyan*, 242 F.3d at 1149; *Crane v. Shalala*, 76 F.3d  
8 251, 253 (9<sup>th</sup> Cir. 1996).

9 The ALJ also noted the definitions of "marked" and "severe"  
10 limitations used by the state agency are different from the Social  
11 Security definitions and, therefore, were not entitled to  
12 controlling weight. (Tr. 23.) While the purpose for which medical  
13 opinions are obtained generally cannot be used to reject an  
14 acceptable medical source opinion, *Saelee v. Chater*, 94 F.3d 520,  
15 523 (9<sup>th</sup> Cir. 1996) (*per curiam*), ALJ Gaughen legitimately declined  
16 to give these check box findings "controlling weight" because of the  
17 variance in agency definitions. See SSR 96-5p (medical source  
18 statements are not given controlling weight on issues reserved to  
19 the Commissioner).

20 Regarding the opinions expressed in Dr. Mabee's narrative  
21 reports, the Ninth Circuit has held an adjudicator is not required  
22 to recite specific words in discounting medical opinions.  
23 *Magallanes v. Bowen*, 881 F.2d 747, 755 (9<sup>th</sup> Cir. 1989). On review,  
24 the court can read the ALJ's summary of the evidence and draw  
25 inferences, if they are there to be drawn. *Id.* Here, ALJ Gaughen  
26 gave a detailed summary of the psychological evaluations in the  
27 record before him, noting 2007 findings of average range of general  
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1 and immediate memory, severe level of anxiety, mild level of  
2 depression, low average working memory, a tendency to avoid  
3 interaction with people other than his friends, problems with focus  
4 concentration, and a limited ability to follow simple directions.

5 (Tr. 18, 252-53.) Summarizing the 2008 evaluation, the ALJ noted  
6 the examiner's findings that Plaintiff tested at a mild level of  
7 anxiety and a severe level of depression, exactly the opposite of  
8 the 2007 evaluation. (Tr. 18, 22, 251, 314.) As found by Dr. Mabee  
9 and noted by the ALJ, Plaintiff would be able to understand and  
10 follow simple, verbal and written instructions and have average to  
11 below average pace of performance and persistence that would  
12 decrease disproportionally as the task increased in demand. The ALJ  
13 also noted the examiner's finding that Plaintiff exhibited below  
14 average to poor ability to reason and use appropriate judgment in  
15 most aspects of his life and would have moderate difficulties  
16 functioning in a typical work environment. (Tr. 18-19, 315-16.)

17 As discussed above, in credibility findings, the ALJ referenced  
18 inconsistencies between the examiners' findings and Plaintiff's  
19 self-report of daily activities, as well as first hand observations  
20 by the examiner that Plaintiff was polite and cooperative and test  
21 results showing minimal sufficient effort and mild exaggeration of  
22 complaints. (Tr. 22, 251, 314.) Also referenced by the ALJ was a  
23 2007 third party statement that Plaintiff spent time being the third  
24 party's helper and the rest of the day looking for work. (Tr. 22,  
25 23.) The ALJ referenced Plaintiff's unexplained failure to seek  
26 individual counseling and/or for medication to control anxiety (as  
27 recommended in both evaluations) and found this was an indication  
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1 that the symptoms were not as severe as alleged. (Tr. 22.) SSR 96-  
2 7p. The court can reasonably infer from these findings that the  
3 ALJ accepted the nature of limitations assessed by Dr. Mabee and  
4 associates but discounted the severity indicated based on  
5 Plaintiff's unreliable self-report and inconsistent test results.  
6 This inference is supported by the record and by the ALJ's final RFC  
7 determination.

8 For example, the ALJ's RFC findings reflect the limitations  
9 identified in both of Dr. Mabee's reports and reported by Plaintiff,  
10 *i.e.*, due to anxiety symptoms, he should avoid sophisticated social  
11 interaction or collaborate work with new and unfamiliar people; due  
12 to problems with concentration and memory, he would have delays in  
13 new detailed tasks and in working memory but he was capable of  
14 learning simple routine tasks. (Tr. 20.) Considering *de novo* the  
15 entire record and the ALJ's detailed summary of the evidence, it  
16 cannot be said the ALJ's final RFC determination is unreasonable.  
17 Although Plaintiff argues he is more limited psychologically than  
18 found by the ALJ, the record in its entirety indicates substantial  
19 evidence supports the ALJ's evaluation of Dr. Mabee's opinions and  
20 the weight given to narrative opinions. Where, as here, substantial  
21 evidence supports the administrative findings, under the case law  
22 the Commissioner's determination is conclusive. Accordingly,

23 **IT IS ORDERED:**

- 24 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 13**) is  
25 **DENIED;**  
26 2. Defendant's Motion for Summary Judgment (**Ct. Rec. 16**) is  
27 **GRANTED.**

1 The District Court Executive is directed to file this Order and  
2 provide a copy to counsel for Plaintiff and Defendant. Judgment  
3 shall be entered for **Defendant**, and the file shall be **CLOSED**.

4 DATED November 15, 2010.

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6 S/ CYNTHIA IMBROGNO  
7 UNITED STATES MAGISTRATE JUDGE  
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